

MICHAEL C. BUFFINGTON, JR., )  
)  
Plaintiff, ) 03:10-cv-06346-HU  
)  
vs. ) **FINDINGS AND**  
) **RECOMMENDATION**  
)  
MICHAEL J. ASTRUE, )  
Commissioner of Social Security, )  
)  
Defendant. )

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6 HUBEL, Magistrate Judge:

7 Michael C. Buffington, Jr. ("Buffington"), seeks judicial  
 8 review of a final decision of the Commissioner of Social Security  
 9 ("Commissioner") denying his application for Supplemental Security  
 10 Income ("SSI") disability payments under Title XVI of the Social  
 11 Security Act (the "Act"), 42 U.S.C. § 1381 *et seq.* This court has  
 12 jurisdiction to review the Commissioner's decision pursuant to 42  
 13 U.S.C. § 405(g). Following a careful review of the record, I  
 14 conclude that the Commissioner's decision should be **REVERSED** and  
 15 **REMANDED** for further proceedings consistent with this Findings and  
 16 Recommendation and the parameters provided herein.

#### 19 ***I. PROCEDURAL BACKGROUND***

20 Buffington protectively filed an application for SSI  
 21 disability payments on August 7, 2008, claiming he was unable to  
 22 work due to a schizoid disorder, post-traumatic stress disorder  
 23 ("PTSD"), obsessive compulsive disorder ("OCD"), and bipolar  
 24 disorder. (Tr. 123-28, 134.) Buffington was ten years old on the  
 25 alleged disability onset date of January 24, 2002. (Tr. 11, 134.)

27 Buffington's application was denied initially on November 18,  
 28

2008, and upon reconsideration on April 2, 2009. (Tr. 7.)  
 Thereafter, a timely written request for hearing was filed on April  
 24, 2009. (Tr. 7.) Buffington appeared and testified at a hearing  
 held on August 20, 2009, before Administrative Law Judge ("ALJ")  
 James Yellowtail. (Tr. 7, 31.) The ALJ issued a decision denying  
 Buffington's claim for benefits on September 22, 2009. (Tr. 31.)  
 Buffington timely requested review of the ALJ's decision, which was  
 subsequently denied by the Appeals Council on August 26, 2010. (Tr.  
 1-3.) As a result, the ALJ's decision became the final decision of  
 the Commissioner that is subject to judicial review. (Tr. 1-3.)

## **II. FACTUAL BACKGROUND**

### **A. Summary of the Medical Evidence, Consultants' Reports, and Written Testimony**

Debora Doryon ("Doryon"), M.A., completed a Psychoeducational  
 Assessment Report on March 22, 2002. (Tr. 255-65.) Doryon's  
 assessment included the following "summary and conclusions":

[Buffington] is an 11 year old fifth grade student who  
 was recommended for this p[s]ychoeducational assessment  
 as part of his three-year reassessment for special  
 education services. Presently, he is identified as a  
 student with an Emotional Disturbance and is receiving  
 services in a Special Day Class. Based on this  
 assessment, [Buffington] is a student of high average  
 cognitive ability with strengths in oral vocabulary  
 (SS=111) who is achieving at grade level in reading  
 (SS=101), and slightly below grade level in spelling  
 (SS=83) and math (SS=81). Standardized testing by the  
 SDC Teacher indicates at least grade level performance[]  
 in all academic areas except for spelling. . . .  
 [Buffington] has numerous behavioral problems both in the  
 school and in the home. These behaviors include defiance  
 and disrespect to adult authority, argumentative comments

1 and outbursts. There are also emotional indicators  
2 indicating a sense of persecution, aggression, anger and  
3 isolation. Based on the above information, [Buffington]  
4 exhibits an inability to build or maintain satisfactory  
5 interpersonal relationships with peers and teachers and  
6 exhibits inappropriate types of behaviors under normal  
7 circumstances in several situations. **These**  
8 **characteristics have existed over a long period of time**  
9 **and to a marked degree and are not primarily due to**  
10 environmental, cultural, or economic disadvantage;  
11 unfamiliarity with the English language; limited school  
12 experience; poor attendance or social maladjustment;  
13 **mental retardation;** or visual, hearing or motor  
14 impairment. Based on these results, [Buffington]  
15 continues to meet the eligibility criteria of Emotional  
16 Disturbance.

17 (Tr. 261) (emphasis added).

18 In late November 2005, mental health specialist Loree Holmes  
19 ("Holmes"), M.A., completed a Comprehensive Mental Health  
20 Assessment on Buffington.<sup>1</sup> (Tr. 355-58.) The November 2005 Mental  
21 Health Assessment provided the following "Clinical Formulation":

22 [Buffington] is a 14 year old male who has been in  
23 psychiatric treatment since 1996, and has had  
24 hallucinations and heard voices since 1999. When he is  
25 not on his medications he is a threat to others, as  
26 ordered by his voices. In addition, he has been a victim  
27 of sexual molestation. Diagnostically [Buffington]  
28 presents with psychotic symptoms which suggests a  
possible schizoaffective disorder. [Buffington] also has  
an abuse history and evidences signs of Posttraumatic  
Stress Disorder (nightmares & unresolved treatment  
issues). Treatment should include individual and  
medication therapy, and will be on-going. I expect his  
psychotic symptoms to remain in remission as long as he  
takes his medication.

(Tr. 357.) The November 2005 Mental Health Assessment references

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<sup>1</sup> The November 2005 Mental Health Assessment prepared by  
Holmes was reviewed and approved by Bazil Freedman, Ph.D. (Tr.  
358.)

1 Axis I diagnoses of: "Schizoaffective Disorder, Depressed";  
2 "Posttraumatic Stress Disorder"; and "Adjustment Disorder w/Mixed  
3 Anxiety and Depressed Mood." (Tr. 357.)

4 On December 9, 2005, Buffington met with Bazil Freedman  
5 ("Freedman"), Ph.D., for further psychiatric evaluation. (Tr. 353-  
6 54, 358.) Buffington's auditory and visual hallucinations  
7 reportedly were "no longer occurring and are [] absent as long as  
8 he stays on his medication regimen." (Tr. 353.) While Buffington's  
9 medications were described as a "great benefit to him," his family  
10 also reported that his medications seem to impact his motor skills,  
11 e.g., he has difficulty tying his shoelaces and writing legibly.  
12 (Tr. 353.) Freedman described Buffington as a patient with  
13 "significant mental health history that includes at least three or  
14 possibly four psychiatric hospitalizations, three of which occurred  
15 in the year 2000." (Tr. 353.) He also noted that Buffington "has  
16 been in some form of treatment or therapy since the age of six  
17 years old." (Tr. 354.) Freedman's diagnostic impression included  
18 Axis I diagnoses of: "Schizoaffective Disorder"; "History of PTSD";  
19 and "History of Depression." (Tr. 354.)

20 Buffington saw Holmes for therapy on December 12, 2005. (Tr.  
21 352, 358.) During that consultation, Holmes provided Buffington  
22 with the following objectives: "successfully stay home alone for  
23 two hours at a time, two times per month"; "take care of [your]  
24 personal hygiene, without help/reminders from mom, 90% of the  
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1 time"; "make at least one new friend at school by June 2006";  
2 "resort to violent outbursts 0% of the time . . . [and] seek help  
3 if the voices re-emerge immediately"; and "[a]ssist family in  
4 accessing appropriate treatment services." (Tr. 352.)

5  
6 On September 13, 2006, psychiatrist Jerome Vergamini  
7 ("Vergamini"), M.D., provided Buffington a note for school, which  
8 indicated that "[Buffington] is taking medications that may require  
9 him to go to the bathroom more frequently. Please give him  
10 permission to use the bathroom as frequently as he needs to go."  
11 (Tr. 351.)

12  
13 On December 4, 2006, Holmes completed an Annual Comprehensive  
14 Mental Health Assessment of Buffington.<sup>2</sup> (Tr. 348-50.) Holmes'  
15 assessment indicates that Buffington "denied any visual or auditory  
16 hallucinations" or "suicidal or homicidal ideation." (Tr. 349.)  
17 Holmes described Buffington as an individual "of low-average  
18 intelligence with poor insight and judgment." (Tr. 349.) Holmes  
19 provided the following "overview of treatment" since Buffington's  
20 last assessment:

21  
22 [Buffington] has been in treatment at Lane County Mental  
23 Health since 11/23/05. He has received individual and  
24 family therapy, as well as medication management. He  
25 came to the clinic with diagnoses of ADHD, PTSD,  
26 Depression, Schizophrenia, Schizoaffective Disorder and  
possibly others. . . . He was initially in treatment with  
Bazil Freedman, M.D., who, after about three months,  
changed his diagnosis to that of an Anxiety Disorder with

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27  
28 <sup>2</sup> The December 2006 Annual Comprehensive Mental Health  
Assessment was reviewed and approved by Vergamini. (Tr. 350.)

1 some obsessive-compulsive features. At that time, he  
2 also reported that [Buffington]'s self-reported  
3 hallucinatory activities did not appear to be true  
4 hallucinations. . . . Even though he was making progress  
5 in becoming more independent and less volatile, both  
6 [Buffington] and his mother continued to be strongly  
7 invested in [Buffington] being an individual with  
8 'psychosis', which is to say a person with severe and  
9 persistent mental illness. In May 2006, Michael changed  
10 doctors and began to see Jerome Vergamini, M.D. . . . His  
11 explosive outbursts occur only rarely, and he no longer  
12 hears voices or reports he has an 'evil side'. . . .  
13 Current presenting problems include his inability and/or  
14 unwillingness to grow-up and work towards becoming  
15 independent. He resents have to awaken and take care of  
16 himself in the morning. This is a 15 year 8 month old  
17 male who asks his parents what he should wear, and need  
18 reminders to dress, brush his teeth and comb his hair.

12 (Tr. 348) (emphasis added). The December 2006 Mental Health  
13 Assessment references Axis I diagnoses of: "Generalized Anxiety  
14 Disorder with Obsessive-Compulsive Symptoms." (Tr. 349.)

15 Buffington saw Vergamini on December 11, 2006, and January 19,  
16 2007. (Tr. 346-47.) Vergamini's progress notes from those  
17 sessions refer to Buffington as having "a previous diagnosis of  
18 Schizoaffective Disorder." (Tr. 346-47.)

19 On February 14, 2007, Buffington saw Vergamini and reported  
20 that he was "doing well" and had only had a few minor "blowups."  
21 (Tr. 344.) Buffington saw Vergamini on March 5, 2007, and  
22 Vergamini reported Buffington was having "some problems coming off  
23 of Paxil," such as increased mood swings and feeling depressed.  
24 (Tr. 341-42.) However, Buffington was "doing much better" after he  
25 was put back on Paxil. (Tr. 342.) Overall, in Vergamini's  
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1 opinion, Buffington "seems to be functioning fairly well on Abilify  
2 30 mg a day, Paxil 5 mg a day, and Lamictal 150 mg a day." (Tr.  
3 342.)

4 Buffington met with Vergamini on April 2, 2007, and reported  
5 difficulties with school and his temper. (Tr. 341.) Vergamini's  
6 progress notes indicate Buffington tried "to get [his stepfather]  
7 to fight with him" and that "motivational problems persist around"  
8 Buffington's Algebra I math class, which he "feels is too difficult  
9 for him." (Tr. 341.)

11 Buffington visited Steven Yoder ("Yoder"), M.D., at the Family  
12 Practice Clinic on April 24, 2007, regarding his asthma, dorsal  
13 back pain, and foot pain. (Tr. 268-69.) Yoder instructed  
14 Buffington to use appropriate asthma medications; set him up with  
15 an allergist; advised him to use ibuprofen for any pain; and  
16 referred him to a "podiatrist for evaluation regarding the possible  
17 need for orthotics." (Tr. 268-69.)

19 On May 5, 2007, Buffington saw Vergamini for a consultation.  
20 (Tr. 340.) Buffington was brought in by his stepfather and mother,  
21 Susan Castleberry ("Castleberry"), who reported that Buffington had  
22 "been very anxious and throwing up in the mornings." (Tr. 340.)  
23 Buffington's parents attributed this to his anxiety. (Tr. 340.)  
24 Castleberry also reported that "he tends to have problems with  
25 hearings voices" when he doesn't take Abilify. (Tr. 340.)

27 Vergamini's June 20, 2007 progress notes indicate that  
28



1 Buffington "has been doing well on Abilify 30 mg daily and Lamictal  
2 150 mg daily. . . . He is out of school but will be taking some  
3 Summer classes to make up some algebra for about three weeks this  
4 Summer." (Tr. 339.)

5  
6 On June 21, 2007, Buffington saw Yoder because of an increased  
7 cough that produced greenish phlegm and a sore throat. (Tr. 266.)  
8 Yoder placed Buffington on "Flovent 44". (Tr. 266.)

9 Vergamini's July 19, 2007 progress notes indicate that  
10 Buffington "generally [has] been doing fairly well except that he  
11 gets into it with his mother and [his stepfather] indicates that he  
12 gets nose to nose with her at times." (Tr. 338.) Vergamini asked  
13 Buffington to sign a contract stating, "I will respect my mother  
14 and let her help me with my homework and not give her a hard time."  
15 (Tr. 338.) Buffington obliged and requested "medication that would  
16 calm him down at those times when he is starting to get pretty  
17 angry." (Tr. 338.)

18  
19 On August 15, 2007, Buffington visited Vergamini for a  
20 consultation. (Tr. 337.) Vergamini's progress notes indicate that  
21 Buffington did not have any "blowups" after signing the July 2007  
22 contract, although he did utilize prescribed medication two or  
23 three times to "calm[] things [] down." (Tr. 337.)

24  
25 Vergamini's September 19, 2007 progress notes indicate  
26 Buffington was "doing well at getting up, going to school, and  
27 getting his medication in before he goes. He has had no  
28

1 meltdowns." (Tr. 336.) At that time, Buffington was in eleventh  
2 grade and was "a teacher's assistant in a couple of classes." (Tr.  
3 336.) Buffington reported that "[h]e likes school and is very  
4 positive about his experience there this year. He is ahead in  
5 credits but will have one more year of school after this." (Tr.  
6 336.)  
7

8 Buffington visited Vergamini on October 29, 2007, along with  
9 Castleberry and his stepfather. (Tr. 335.) Vergamini's progress  
10 notes indicate that:

11 Things are going reasonably well. He is getting 'B's' at  
12 school but he talks about having a lot of anxiety at  
13 school too. He has got a fine tremor, which seems to get  
14 worse in situations where he is under stress. Apparently,  
15 he has had enough anxiety at school that he gets  
nauseated and has to go to the nurse a lot. The anxiety  
usually centers around school, both in class and doing  
homework around friends.

16 (Tr. 335.) As a result, Vergamini decided to prescribe Buffington  
17 "buspirone 15 mg twice a day." (Tr. 335.)  
18

19 On October 30, 2007, Holmes completed an Annual Comprehensive  
20 Mental Health Assessment of Buffington.<sup>3</sup> (Tr. 332-33.) At that  
21 time, Buffington had "made good progress on all of his goals"; had  
22 "become quite independent and social"; stayed "home alone"; and had  
23 "developed a network of neighborhood friends." (Tr. 332.) However,  
24 Buffington continued to need "lots of prompting in the morning to  
25 get up, get dressed and get out the door to school on time"; and  
26

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27 <sup>3</sup> The October 2007 Annual Mental Health Assessment was  
28 reviewed and approved by Vergamini. (Tr. 333.)

1 continued to need "support and encouragement in social skill  
2 development." (Tr. 332.) Buffington reported that his biggest  
3 concern was anxiety related to social pressure and feeling  
4 incompetent, which results in "emotional meltdowns" at school and  
5 vomiting. (Tr. 332.) According to Holmes, Buffington is "quite  
6 bright" and "is currently maintaining a B+ average in the 11<sup>th</sup>  
7 grade[.] . . . He is on an [Independent Education Program], but is  
8 mainstreamed for most of the day." (Tr. 333.) During Holmes'  
9 interview, Buffington denied any visual hallucinations, but did  
10 "report hearing voices again" that "say 'evil things.'" (Tr. 333.)  
11

12 The October 2007 Mental Health Assessment references Axis I  
13 diagnoses of "Generalized Anxiety Disorder" and "Schizoaffective  
14 Disorder." (Tr. 333.) Holmes' clinical formulation states,  
15 "[Buffington] experiences excessive anxiety and worry in several  
16 areas of his life. He also experiences hallucinations and  
17 disorganized speech. He benefits from medication management, and  
18 could benefit from a skill builder to help with social skill  
19 building, as well as on-going therapy." (Tr. 333.)  
20  
21

22 On November 21, 2007, Buffington saw Vergamini and reported  
23 going to Urgent Care recently because he was experiencing  
24 dizziness; lost feeling and use of his lower extremities; and lost  
25 vision in both eyes. (Tr. 330.) Buffington also reported "he has  
26 had headaches, nausea, and sees sparkling lights at times." (Tr.  
27 330.) According to Vergamini, Buffington claimed "[t]his has been  
28

1 going on for about a year and [a] half but he has neglected to tell  
2 me up until now." (Tr. 330.) Vergamini suggested that Buffington  
3 cease taking "Abilify for the next week to see how he does without  
4 that medication." (Tr. 330.)

5  
6 On November 28, 2007, Buffington visited Vergamini and  
7 reported difficulties with his vision. (Tr. 328.) Vergamini found  
8 "there a quality to this that made [him] wonder about how much [of  
9 it] was psychogenic." (Tr. 328.)

10 Buffington's next visit with Vergamini was on January 4, 2008.  
11 (Tr. 326.) At that time, Buffington was "more depressed,"  
12 irritable, and was "giving his parents a tougher time" after being  
13 off of Abilify. (Tr. 326.) Vergamini noted that he took Buffington  
14 off of Abilify because he was experiencing dizziness, headaches,  
15 and "feeling overly subdued." (Tr. 326.) Vergamini found  
16 Buffington "somewhat giddy and a little inappropriate in terms of  
17 his interactions and reverting to more childlike banter and some of  
18 the things that I saw initially with him." (Tr. 326.) Vergamini  
19 referred to Buffington "as a young man with a Shizoffective  
20 diagnosis." (Tr. 326.) Because Buffington's parents did not feel  
21 a lower dosage of Abilify would be effective, Vergamini prescribed  
22 Buffington Seroquel. (Tr. 326.)

25 Buffington returned to Vergamini's office on January 16, 2008,  
26 and reported that the Seroquel was not producing desired results.  
27 (Tr. 325.) Castleberry reported that Buffington was "too sedated"  
28

1 on the medication and said he couldn't feel his legs. (Tr. 325.)  
2 Castleberry put him back on Abilify and reported that he was doing  
3 much better. (Tr. 325.)

4 On February 13, 2008, Buffington saw Vergamini, who stated,  
5 "Buffington looks as though he is back to the level he was at  
6 before deteriorating a bit earlier in the year or later in the  
7 fall. He looks reasonably stable on his medications." (Tr. 324.)  
8 Overall, Buffington was described as "a young man who is  
9 Schizoaffective but fairly stable at this point." (Tr. 324.)

10 On March 10, 2008, Castleberry reported to Vergamini "that  
11 things are going fairly well" and that he "is pretty well  
12 stabilized on the [current] medication." (Tr. 323.)

13 Buffington had a follow up visit with Vergamini on April 25,  
14 2008. (Tr. 322.) Buffington reported that "things are going  
15 fairly well" and he "only threw up twice" since the last time  
16 Vergamini saw him. (Tr. 322.)

17 On June 6, 2008, Buffington saw Vergamini and reported  
18 recently breaking his right wrist playing football. (Tr. 321.)  
19 Buffington was again described as "a young man with Schizoaffective  
20 Disorder who is fairly stable at this point on his medications,  
21 namely Abilify 15 mg twice a day and Lamictal 75 mg twice a day."  
22 (Tr. 321.)

23 Vergamini's July 23, 2008 progress notes indicate that  
24 Buffington passed all of his junior year classes and his "Mom wants  
25

1 to get him back on SSI so that he can get Oregon Health Plan again  
2 so that she can better afford his prescriptions." (Tr. 320.)

3 Castleberry completed a Function Report- Child on August 7,  
4 2008. (Tr. 141.) Castleberry indicated that Buffington's speech  
5 can be understood by people who know him "[m]ost of the time" and  
6 by people who don't know him well "[s]ome of the time." (Tr. 142.)  
7 Castleberry observed that Buffington "[h]as had problems with [his]  
8 medication mak[ing] his vision blurry." (Tr. 143.) Castleberry  
9 stated that Buffington had difficulty hearing because of "delayed  
10 responses," which she attributed to "possible autism."<sup>4</sup> (Tr. 143.)

11 Castleberry indicated that Buffington is capable of: answering  
12 the telephone and making telephone calls; delivering phone  
13 messages; repeating stories he has heard; telling jokes or riddles  
14 accurately; explaining why he did something; using sentences with  
15 "because," "what if," or "should have been"; asking for what he  
16 needs; talking with family; and talking with friends. (Tr. 144.)  
17 Additionally, Castleberry observed that Buffington is capable of:  
18 reading and understanding sentences in comics and cartoons; reading  
19 and understanding stories in books, magazines, or newspapers;  
20 spelling words of more than 4 letters; telling time; adding and  
21 subtracting numbers over 10; multiplying and dividing numbers over  
22 10; understanding money/ making correct change; and understanding,  
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27  
28 <sup>4</sup> There is no record of anyone evaluating Buffington as being  
autistic other than this stray comment by Castleberry.

1 carrying out, and remembering simple instructions. (Tr. 145.)

2 In terms of Buffington's physical abilities, Castleberry  
3 stated that he can walk; run; dance; swim; ride a bike; throw a  
4 ball; jump rope; play sports; and work video game controls. (Tr.  
5 145.) However, Buffington cannot drive a car and "has been in  
6 adaptive [p]hysical education because of his flat feet." (Tr.  
7 145.) Buffington's flat feet are only problematic "if it is too  
8 hot outside." (Tr. 145.)

10 Castleberry indicated that Buffington's impairments have  
11 affected his social activities. (Tr. 146.) Specifically,  
12 Buffington has no friends his own age; cannot make new friends; and  
13 cannot not play team sports. (Tr. 146.) However, Buffington does  
14 get along with Castleberry, other adults, his siblings, and school  
15 teachers. (Tr. 146.) Castleberry explained that, "[u]sually [he]  
16 gets along with me and other adults but there have been conflicts,  
17 usually when he is having hallucinations-- he has had multiple  
18 personalities. Medications help but not completely. He hear[s]  
19 voices that have told him to hurt me. He can change in an instant  
20 and become violent." (Tr. 146.)

23 As to Buffington's ability to take care of his personal needs,  
24 Castleberry observed that he doesn't: take care of his personal  
25 hygiene; wash and put away his clothes; take needed medication; use  
26 public transportation by himself; or accept criticism or  
27 correction. (Tr. 147.) But Buffington is able to: help around the  
28

1 house; cook a meal for himself; get to school on time; study and  
2 complete homework assignments; keep himself out of trouble; obey  
3 rules; avoid accidents; and ask for when help when needed. (Tr.  
4 147.)

5  
6 In terms of Buffington's "ability to pay attention and stick  
7 with a task," Castleberry reported that Buffington is able to work  
8 on arts and crafts projects; finish things he starts; and complete  
9 chores most of the time. (Tr. 148.) But Buffington experiences  
10 difficulty when it comes to keeping busy on his own; completing  
11 homework; and completing homework on time.<sup>5</sup> (Tr. 148.)

12  
13 On August 12, 2008, mental health specialist Brian Alexander  
14 ("Alexander"), M.A., provided a progress note that indicates  
15 Buffington was no longer eligible for Oregon Health Plan ("OHP")  
16 benefits since Castleberry's income was "too high." (Tr. 319.)  
17 However, in August 2008, Castleberry "was not working because she  
18 ha[d] been diagnosed with [] cancer." (Tr. 319.)

19  
20 During Buffington's August 20, 2008 visit with Vergamini, he  
21 reported that things were going well over the summer and expressed  
22 interest in returning for his senior year of high school. (Tr.  
23 318.)

24 Phyllis Goldman ("Goldman") completed a Teacher Questionnaire  
25 on September 19, 2008. (Tr. 160-67.) Goldman has known Buffington  
26

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27  
28 <sup>5</sup> Castleberry appears to contradict her testimony regarding  
Buffington's ability to do homework. (See Tr. 147 vs. Tr. 148.)



1 for two years and spends approximately five hours a week with him.  
2 (Tr. 160.) Goldman confirmed that Buffington has exhibited an  
3 "unusual degree of absenteeism" and that he "gets stuck a lot,  
4 [which] usually means he is stressed out [and] doesn't want to do  
5 [] work." (Tr. 160.)  
6

7 The questionnaire first asked Goldman to provide ratings based  
8 on ten activities which are used to evaluate Buffington's ability  
9 to acquire and use information. (Tr. 161.) Goldman indicated that  
10 Buffington has "no problem" with understanding and participating in  
11 class discussions; and providing organized oral explanations and  
12 adequate descriptions. (Tr. 161.) He has a "slight problem" with  
13 understanding school and content vocabulary; reading and  
14 comprehending written material; learning new material; and  
15 recalling and applying previously learned material. (Tr. 160.)  
16

17 Goldman believes Buffington has "an obvious problem" with  
18 comprehending oral instructions; and expressing ideas in written  
19 form. (Tr. 161.) He also has "a serious problem" with comprehending  
20 and doing math problems; and applying problem-solving skills in  
21 class discussions. (Tr. 161.) Goldman stated that Buffington  
22 "[r]arely will do work independently. [He] [w]ants someone telling  
23 him what to do every step of the way even though he can do [it] on  
24 his own." (Tr. 161.)  
25

26 Next, Goldman rated thirteen activities which are used to  
27  
28

1 evaluate Buffington's ability to attend and complete tasks.<sup>6</sup> (Tr.  
2 162.) Goldman opined that Buffington has no problem paying  
3 attention when spoken to directly and only a slight problem  
4 changing from one activity to another without being disruptive.  
5 (Tr. 162.) He has an obvious problem with refocusing to task when  
6 necessary; carrying out multi-step instructions; waiting to take  
7 turns; and working without distracting himself or others. (Tr.  
8 162.) Buffington has a serious problem focusing long enough to  
9 finish an assigned activity or task; organizing his own things or  
10 school materials; completing class/homework assignments; and  
11 completing work accurately without careless mistakes. (Tr. 162.)  
12

13 As to interacting and relating with others, Goldman observed  
14 that Buffington "has problems functioning in this domain." (Tr.  
15 163.) Specifically, Goldman indicated that Buffington has an  
16 obvious problem with making and keeping friends; appropriately  
17 seeking attention; and expressing anger appropriately. (Tr. 163.)  
18 He has a slight problem playing cooperatively with other children;  
19 respecting/obeying adults in authority; relating experiences and  
20 telling stories; taking turns in a conversation; interpreting the  
21 meaning of facial expressions; and using adequate vocabulary and  
22 grammar to express thoughts and ideas. (Tr. 163.) However,  
23 Buffington has no problem asking for permission appropriately;  
24  
25  
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27 <sup>6</sup> Goldman did not provide a rating with respect to  
28 Buffington's ability to sustain attention during play/sports  
activities or work at a reasonable pace/finish on time. (Tr. 162.)

1 following rules; using language appropriate to the situation and  
2 listener; or introducing and maintaining relevant and appropriate  
3 topics of conversation. (Tr. 163.)

4 With respect to Buffington's ability to move about and  
5 manipulate objects, Goldman observed that he has no problems in  
6 this domain and that his functioning appears age-appropriate. (Tr.  
7 164.)

9 Buffington's ability to care for himself was the only domain  
10 that Goldman rated Buffington as having a "very serious problem"  
11 with certain activities. (Tr. 165.) Those activities included  
12 Buffington's ability to respond appropriately to changes in his  
13 mood (e.g., calming himself down); and his ability to use  
14 appropriate coping skills to meet the daily demand of the school  
15 environment. (Tr. 165.) Goldman rated Buffington as having a  
16 serious problem handling frustration appropriately; and an obvious  
17 problem with being patient, identifying and appropriately asserting  
18 emotional needs, and knowing when to ask for help.<sup>7</sup> (Tr. 165.)  
19 Buffington was deemed to only have a slight problem caring for  
20 physical needs (e.g., dressing, eating), and using good judgment  
21 regarding personal safety and dangerous circumstances. (Tr. 165.)

24 Lastly, as to Buffington's medical conditions and physical  
25 well-being, Goldman indicated that Buffington "throws up often";  
26

---

27 <sup>7</sup> Goldman specifically said Buffington "asks for too much  
28 help." (Tr. 165.)

1 however, she also emphasized that this has always been "self  
2 reported, not observed." (Tr. 166.)

3 On September 22, 2008, Buffington told Vergamini that "[h]e is  
4 a little worried about school because he finds himself not very  
5 assertive with teachers and then ends up feeling somewhat  
6 victimized." (Tr. 317.) Vergamini worked with Buffington on "some  
7 assertive techniques." (Tr. 317.) Buffington was accompanied by  
8 Castleberry and his case manager, Alexander, who was planning on  
9 attending Buffington's upcoming Independent Education Program  
10 ("IEP") meeting. (Tr. 317.)

12 On October 2, 2008, Alexander was present at Buffington's IEP  
13 meeting, along with Castleberry, his stepfather, and special  
14 education teacher Goldman. (Tr. 316.) During the IEP meeting, it  
15 was noted that Buffington was currently passing all his classes;  
16 the number of his anxiety-related absences had reduced; he was  
17 currently on track to graduate with a regular diploma; Goldman said  
18 "he is a delight to be around, everyone likes him and he seems to  
19 like everyone"; and Buffington was described as "bright, highly  
20 social, honest, kind, good sense of humor, and has good insight."  
21 (Tr. 316.)

22 Alexander's October 2, 2008 progress notes indicates that  
23 Buffington's IEP "is for Emotional Disturbance" and that he  
24 "receives behavioral support, extended test taking time, alternate  
25 location[s] for taking exams, and shortened assignments."  
26

1 (Tr. 316.)

2 On October 2, 2008, Bethel School District submitted a record  
3 regarding Buffington's present level of academic achievement, which  
4 indicates that Buffington passed "the 10<sup>th</sup> grade state reading  
5 assessment, but did not pass writing, math or science." (Tr. 198.)  
6

7 On October 20, 2008, Buffington had a follow up visit with  
8 Vergamini. (Tr. 315.) Vergamini noted that Buffington was "doing  
9 well in school and is well liked by his peers and teachers." (Tr.  
10 315.) At that time, Buffington was still "taking Abilify 15 mg  
11 twice a day and Lamictal 150 mg half a tablet twice a day." (Tr.  
12 315.)

13 On October 27, 2008, Alexander completed an Annual  
14 Comprehensive Mental Health Assessment of Buffington.<sup>8</sup> (Tr. 313-  
15 14.) The October 2008 Mental Health Assessment references Axis I  
16 diagnoses of "Generalized Anxiety Disorder" and "Schizoaffective  
17 Disorder." (Tr. 314.) Alexander's clinical formulation states:  
18

19 [Buffington] continues to need some prompting in the  
20 morning to get up, get dressed and get out the door to  
21 school on time, though there has been significant  
22 improvement in this area. He continues to require  
23 support and encouragement in social skill development  
24 although some improvement is noted by parents and school.  
25 [Buffington] still experiences anxiety related to school  
26 and social interactions, though his anxiety related  
absences have reduced, and his pe[e]r relations have  
improved. [Buffington] is currently passing all his  
classes and is currently on track to receive a regular  
diploma. His teachers and others within the school find

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27 <sup>8</sup> The October 2008 Mental Health Assessment was reviewed and  
28 approved by Vergamini on October 29, 2008. (Tr. 314.)

1 him to be a 'delight to be around.' They acknowledge he  
2 has grown up a lot in the past year. He is also doing  
3 better with transitions, though this is an area which  
still needs improvement.

4 (Tr. 314.)

5 Paula Belcher ("Belcher"), Ph.D., completed a Psychological  
6 Assessment on November 8, 2008. (Tr. 292-98.) Buffington was  
7 referred to Belcher "for a comprehensive psychodiagnostic exam by  
8 the Disability Determination Services to assess schizoid  
9 personality disorder, obsessive-compulsive disorder, posttraumatic  
10 stress disorder, and bipolar disorder and to determine eligibility  
11 for services." (Tr. 292.) Buffington reported to Belcher that "he  
12 is depressed, hears voices, has visual hallucinations, and has  
13 experienced trauma, citing the death of his father before age 7."  
14 (Tr. 293.) Belcher's report indicates that, "[h]e said his father  
15 died in prison, and 'everyone' said it was suicide, but the client  
16 believes he was murdered, because, he said, '[m]y dad was in a  
17 wheelchair and could not reach the bar they said he hung himself  
18 from.'" (Tr. 294.)

21 During her assessment, Belcher administered the Weschler Adult  
22 Intelligence Scale-IV ("WAIS-IV") test, which is used to measure  
23 various cognitive abilities. (Tr. 296.) Buffington earned a score  
24 of 80 on Verbal Comprehension, "placing him at the 9<sup>th</sup> percentile  
25 and in the low average range." (Tr. 297.) He earned a score of 73  
26 on Perceptual Reasoning, "placing him at the 4<sup>th</sup> percentile and in  
27 the borderline range." (Tr. 297.) He earned a score of 60 on

1 Working Memory, "placing him at the 0.4 percentile and in the  
2 extremely low range." (Tr. 297.) He earned a score of 56 on  
3 Processing Speed, "placing him at the 0.2 percentile and in the  
4 extremely low range." (Tr. 297.) Overall, Buffington's scores  
5 yielded a Full Scale IQ of 63, "placing him at the 1<sup>st</sup> percentile  
6 and in the extremely low range of general intellectual functioning  
7 when compared to persons his age." (Tr. 297.) Belcher opined that  
8 there is a 95% probability that Buffington's true IQ lies between  
9 60 and 68. (Tr. 297.)  
10

11 Based on her diagnostic interview and mental status exam,  
12 Belcher offered the following hypotheses: (1) "a diagnosis,  
13 confirming that of the client's psychiatrist, of schizoaffective  
14 disorder, bipolar type, is given"; (2) "[w]hile the client  
15 experiences some anxiety and compulsive behaviors, they are not  
16 sufficient to warrant a diagnosis of PTSD or OCD"; (3) "[t]he  
17 client does not have a diagnosis of schizoid personality disorder";  
18 and (4) "[t]he client's intellectual functioning is in the  
19 extremely low range, resulting in a diagnosis of mild mental  
20 retardation. His individual strength in vocabulary serves him in  
21 his ability to communicate verbally with others, thereby somewhat  
22 disguising some of his cognitive deficits." (Tr. 298.)  
23

24  
25 On November 17, 2008, non-examining state agency psychiatric  
26 consultant Charles Lawrence ("Lawrence"), Ph.D., prepared a  
27 Childhood Disability Evaluation Form. (Tr. 299-304.) Lawrence  
28

1 opined that Buffington did not suffer from a severe impairment or  
2 combination of impairments that is severe. (Tr. 299.) Lawrence  
3 noted that the "10/30/07 annual assessment by the mental health  
4 treating agency confirms long term psychiatric stability, becoming  
5 'quite independent and social . . . [, with a] network of  
6 neighborhood friends.' That report also shows that the adolescent  
7 is 'quite bright . . . maintaining a B+ average in the 11<sup>th</sup> grade.'" (Tr. 304.) In Lawrence's opinion, "[o]ne would not guess that this  
8 is the same person evaluated by P. Belcher, Ph.D. on 11/08/08. In  
9 that exam the claimant presented as being unable to perform serial  
10 7's or serial 3's, unable to spell 'WORLD', and he obtained a FSIQ  
11 of 63 on the WAIS III." (Tr. 304.) Lawrence went on to state,  
12 "[u]nfortunately Dr. Belcher neglected to confirm a history of  
13 developmental delay and deficits of adaptive behavior before  
14 advancing the diagnosis of Mental Retardation. She merely cited  
15 the IQ scores, as if no other confirming evidence was required."  
16 (Tr. 304.) Lawrence concluded by stating:

17 [The claimant] was 'ahead in his credits' (for  
18 graduation) per the psychiatric progress note of  
19 09/19/07, and the longitudinal school records show he has  
20 been achieving at age/grade level for many years. The  
21 adolescent also told Dr. Belcher he had been hearing a  
22 voice telling him 'they must die' and was thinking of  
23 suicide a lot. Those allegations conflict with the tx  
24 records. CONCLUSION: The claimant did not cooperate in  
25 the exam process with Dr. Belcher. That report will be  
26 given no weight. The longitudinal records of mental  
27 treatment and school performance and behavior document no  
28 important limitations. NON-SEVERE.

(Tr. 304.)



1 On January 12, 2009, Buffington returned to Vergamini's office  
2 for a consultation. (Tr. 311.) Vergamini's progress notes indicate  
3 that Buffington had been "turned down by Social Security." (Tr.  
4 311.) Because Buffington was no longer on the OHP, Vergamini made  
5 efforts to get Buffington "enough samples of Abilify and Lamictal  
6 to get us through about a month." (Tr. 311.)

8 On February 18, 2009, Buffington visited Vergamini and  
9 reported that he was considering joining a writing group, and that  
10 he was having trouble sleeping. (Tr. 310.) Buffington was still  
11 receiving samples of his medications because he was "not covered by  
12 any kind of insurance." (Tr. 310.)

14 On March 30, 2009, non-examining state agency psychiatric  
15 consultant, Bill Hennings ("Hennings"), Ph.D., prepared a Childhood  
16 Disability Evaluation Form on Buffington. (Tr. 359-64.) Hennings  
17 concluded that Buffington suffers from impairment(s) that are  
18 severe, but do not meet, medically equal, or functionally equal a  
19 listing. (Tr. 359.) With respect to functional equivalence,  
20 Hennings evaluated Buffington's capabilities under six domains of  
21 functioning. (Tr. 361.) He opined that Buffington has less than  
22 marked limitations in acquiring and using information; attending  
23 and completing tasks; interacting and relating with others; and  
24 caring for himself. (Tr. 361-62.) He opined that Buffington had  
25 no limitation with respect to moving about and manipulating  
26 objects, or health and physical well-being. (Tr. 361-62.) In  
27  
28

1 support of his findings, Hennings noted that Belcher's IQ testing  
2 was invalid "per Dr. Lawrence." (Tr. 364.)

3 On April 2, 2009, Hennings prepared a Psychiatric Review  
4 Technique Form, wherein he evaluated Buffington's impairments under  
5 Listings 12.02 (organic mental disorders), 12.04 (affective  
6 disorders), and 12.06 (anxiety-related disorders). (Tr. 369.) He  
7 concluded that the limitations imposed by Buffington's impairments  
8 did not satisfy the requisite criteria of Listings 12.02, 12.04, or  
9 12.06. (Tr. 379-80.)

11 On April 2, 2009, Hennings submitted a Mental Residual  
12 Functional Capacity Assessment, which describes Buffington as  
13 "[m]oderately [l]imited" in six of twenty categories of mental  
14 activity and "[n]ot [s]ignificantly [l]imited" in fourteen. (Tr.  
15 383-84.) Hennings' conclusion states:

17 Claimant has a history of anxiety in social setting[s],  
18 some compulsions and need for behavioral support in  
19 scholastic setting. He is capable of carrying out simple  
20 tasks with regular supervision. He will work best in an  
21 environment with infrequent and restricted/directed  
22 interactions with coworkers or the general public. He has  
23 a history of oppositional behaviors and will benefit from  
24 a supervisor aware of his attitudes who can provide  
25 feedback in an acceptable manner.

26 (Tr. 385.)

27 On April 3, 2009, Buffington had an individual therapy session  
28 with Alexander and was accompanied by Castleberry. (Tr. 391.)  
Castleberry reported that Buffington had "been struggling with  
increased audio and visual hallucinations in the past week or so."

1 (Tr. 391.) Buffington did not attend school that day.<sup>9</sup> (Tr. 391.)

2 On April 7, 2009, Buffington reported to Alexander that he had  
3 "been very stressed lately" and that his medications were not  
4 working very well. (Tr. 391.)

5 Vergamini's April 27, 2009 progress notes reference the fact  
6 that Buffington received "an ECMC scholarship which pays [] \$4,000  
7 for the first year of college and \$2,000 the second." (Tr. 390.)  
8 At that time, Buffington was planning on attending Lane Community  
9 College ("LCC") in the fall and to apply for a job at the high  
10 school bakery. (Tr. 390.)

11  
12 In the April and May 2009 progress notes, there is an undated  
13 report from either Vergamini or Alexander, which indicates that  
14 Buffington was experiencing increased audio and visual  
15 hallucinations.<sup>10</sup> (Tr. 390.) Buffington characterized his  
16 hallucinations as "grim" and that "the auditory ones are usually  
17 something like 'kill, kill, kill, die, die, die . . .'" (Tr. 390.)  
18 Buffington's visual hallucinations are "images or figures which are  
19 trying to attack him, such as a large version of the Energizer  
20 Bunny." (Tr. 390.) Buffington said "most of his stress come[s]  
21 from school and how he feels other students don't treat everyone  
22  
23  
24

---

25 <sup>9</sup> The record suggests Buffington was taking his medications  
26 appropriately at this time.

27 <sup>10</sup> It appears that the heading of this progress note was cut  
28 off, because the text does not appear to coincide with the language  
from the preceding page. (See Tr. 389-90.)

1 with respect." (Tr. 390.) Buffington agreed to engage in therapy  
2 for a brief period to learn stress reduction techniques in order to  
3 alleviate "increased psychotic symptoms." (Tr. 390.)

4 On May 1, 2009, Buffington saw Alexander for an individual  
5 therapy session. (Tr. 389.) According to Alexander, Buffington  
6 presented himself in a "very manic and upbeat" manner. (Tr. 389.)  
7 Buffington denied hearing voices or having visual hallucinations at  
8 that time. (Tr. 389.)

10 During Buffington's May 12, 2009 individual therapy session,  
11 Alexander inquired as to whether Buffington "was manic because he  
12 was talking non-stop in a hurried fashion." (Tr. 389.) Buffington  
13 denied being manic and denied having any delusions or  
14 hallucinations. (Tr. 389.)

16 On May 28, 2009, Alexander met with Buffington and  
17 Castleberry. (Tr. 389.) Castleberry had recently been hospitalized,  
18 but Buffington managed "his stress levels and avoided severe  
19 psychotic symptoms." (Tr. 389.)

20 On July 7, 2009, Buffington's counsel sent Vergamini a letter  
21 asking him to comment on Buffington's "present status and  
22 functional capacities limitations." (Tr. 393.) Vergamini  
23 responded on July 22, 2009, reiterating the fact that Buffington  
24 suffers from a Schizoaffective Disorder, and experiences "auditory  
25 hallucinations, explosive behavior, difficulties with school and  
26 peer relationships." (Tr. 394.) In Vergamini's opinion, "with his  
27  
28

1 medications he might be able to function in school or some work  
2 settings"; however, he doubted whether "he could maintain  
3 8hours/day 5days/week without some accomodations or absences."  
4 (Tr. 394.)

5  
6 On July 22, 2009, Vergamini also completed a questionnaire  
7 concerning Buffington's mental residual functional capacity. (Tr.  
8 396.) Vergamini described Buffington as moderately limited in  
9 twelve of twenty categories of mental activity and not  
10 significantly limited in eight. (Tr. 397-99.) In Vergamini's  
11 opinion, these limitations have lasted twelve continuous months  
12 and/or can be expected to last twelve continuous months at the  
13 assessed severity. (Tr. 399.)  
14

15 ***B. Buffington's Hearing Testimony***

16 During the August 20, 2009 hearing before the ALJ, Buffington  
17 testified that he had recently graduated and had applied to LCC.  
18 (Tr. 40.) Buffington indicated that he was in special education  
19 all four years of high school, and had been in special education  
20 classes "[a]lmost all [his] life." (Tr. 41, 58.) Buffington  
21 testified that he missed school at least three times a month on  
22 average because of anxiety-related symptoms. (Tr. 60.)  
23

24 Buffington stated that his penmanship is not legible and he  
25 types slowly, but he is good at mathematics. (Tr. 41-42.)  
26 Although chart notes referenced Buffington joining a chess club and  
27 writing group, he confirmed that this never took place. (Tr. 59.)  
28

1 Buffington testified that he started Abilify in 2003 "at a  
2 mental institution" in order to stop his "bipolar" and  
3 "schizoaffective tendencies," such as auditory and visual  
4 hallucinations. (Tr. 45.) Buffington indicated that Abilify  
5 impacts his vision, ability to speak, and write. (Tr. 46.)  
6 Lamictal causes him to have tremors. (Tr. 46.)

8 Buffington stated that his medications "help but they're no  
9 cure . . . [and] they don't help as much as I think they should."  
10 (Tr. 47.) In fact, Buffington believes he does "most of the work  
11 [him]self." (Tr. 47.)

12 Buffington believes that "stress" would prevent him from being  
13 employed. (Tr. 48.) He testified that:

15 I've had multiple episodes of stress, manic episodes  
16 because of the stress at my house and my -- and at  
17 school. And I -- [if] this was at work I would have the  
18 same problems because, you know, I don't want to flip  
out, you know. I mean, I am -- I try to be peaceful. I  
mean, stress just gets me really bad.

19 (Tr. 48.) When Buffington is stressed, he becomes agitated and has  
20 "problems in [his] head," such as "hearings things that aren't  
21 there. If it gets [bad] enough my head starts to hurt really bad  
22 and they start screaming at me. And then that's when I start  
23 seeing things." (Tr. 49.) Buffington tries to utilize stress  
24 reduction techniques in order to alleviate his psychotic symptoms.  
25 (Tr. 49.)

27 Buffington stated that he has to leave school often because he  
28

1 vomits or faints. (Tr. 52.) After school, Buffington often times  
2 goes straight to his room since it is the only place he "think[s]  
3 straight." (Tr. 53.) His hobbies consist of writing poetry on the  
4 computer. (Tr. 53.) Buffington indicated that he has difficulty  
5 following instructions and staying focused. (Tr. 57.)  
6

### 7 ***C. Castleberry's Hearing Testimony***

8 On August 20, 2009, Castleberry testified at the hearing  
9 before the ALJ as well. (Tr. 66.) Castleberry indicated that  
10 Buffington was in special education classes in elementary and  
11 middle school, but "in high school he was able to attend the  
12 mainstream classes with the exception of [] one class[.]" (Tr. 66.)  
13 Castleberry characterized Buffington's ability to handle stress as  
14 "[v]ery poor unfortunately. He does not handle stress well." (Tr.  
15 67.) Castleberry has observed that  
16

17 [Buffington's reaction to stress] can vary. Worst case  
18 scenario, he can become very agitated. He can have a real  
19 quick change in his mood where he become[s] agitated,  
20 fidgety. If it's a violent agitation, he can start  
21 yelling, become combative, threatening to hurt others,  
22 threatening to hurt himself. If it's sort of [a]  
nonviolent type of agitation, he can just become very  
nervous, a lot of anxiety and start shaking, trembling  
and kind of withdrawing.

23 (Tr. 67.) Castleberry indicated that Buffington tries to utilize  
24 deep breathing techniques to relieve some of his symptoms. (Tr.  
25 67.)

26 According to Castleberry, the week before the hearing  
27 Buffington "threatened to hurt himself, pulled out a knife, had the  
28

1 knife at his neck, [and] was talking about calling 911." (Tr. 69.)  
2 Castleberry says Buffington "is concerned that maybe he shouldn't  
3 be . . . on the streets . . . [and] should go back to the mental  
4 hospital." (Tr. 69.)

5 Castleberry stated that Buffington usually will "go [to  
6 school] three to four days out of a five-day week, but then in some  
7 cases there would be maybe a week at a time that he wouldn't go to  
8 school." (Tr. 69.) Apparently, Buffington

10 sometimes . . . would have legitimate health issues like  
11 having a bad cold or a bad flu and running a fever. On  
12 other days, it would be as a result of anxiety. He would  
13 be very, very nervous or apprehensive about . . . an  
14 upcoming exam or he might have had a problem with a  
15 teacher or if he had failed to do his homework or  
something of that nature and he would get nervous. . . .  
Other times, he would be extremely tired and not be able  
to really get out bed in the morning.

16 (Tr. 69-70.)

17 Castleberry has observed that "the Abilify has been very  
18 helpful . . . [with] anger outbursts but they're not totally  
19 effective. He still complains to me about hearing a lot of  
20 voices, . . . it seems like the medication is not really helping  
21 him very much right now." (Tr. 70-71.)

23 At the conclusion of her hearing testimony, Castleberry  
24 confirmed that Buffington graduated on time despite his  
25 absenteeism. (Tr. 71.) Castleberry believes Buffington was able  
26 to graduate because of his own perseverance, the fact that he is  
27 "very bright," and since he "had a lot of help from his teachers."  
28



1 (Tr. 71.)

2 ***D. Vocational Expert's Testimony***

3 At the August 20, 2009 hearing, the ALJ also received  
4 testimony from a Vocational Expert ("VE"). (Tr. 72-82.) The ALJ  
5 asked the VE to consider a person of Buffington's "age, education  
6 and vocational background . . . [who] should be limited to simple  
7 repetitive tasks with simple instructions . . . [and] should be  
8 limited to no more than occasional contact with co-workers and the  
9 general public." (Tr. 76.) The VE stated that the jobs of  
10 collator and garment bagger existed in substantial numbers in the  
11 national economy. (Tr. 76-77.)  
12

13 The ALJ asked the VE to consider the same hypothetical  
14 individual, but with the addition that the individual had no  
15 exertional limits. (Tr. 77.) The VE stated that this would not  
16 change his answer in anyway. (Tr. 77.)  
17

18 The ALJ added to the hypothetical that "this person has a  
19 limitation to manipulation, that he can do no fine handling or  
20 fingering of objects." (Tr. 77.) The VE stated that "the two jobs  
21 previously identified would still exist . . . [because] those do  
22 not require fine manipulation." (Tr. 77.)  
23

24 The ALJ then added to the hypothetical "the additional  
25 limitation that this person would have to have frequent access to  
26 a bathroom." (Tr. 78.) Because Buffington testified that he needs  
27 to use the restroom "about once an hour," the ALJ "defined frequent  
28

1 as one time per hour for the purposes of the [] hypothetical." (Tr.  
2 79.) In the VE's opinion, even if Buffington had to use the  
3 bathroom once every hour, he could still work as a collator or  
4 garment bagger. (Tr. 79-80.)

5  
6 After the ALJ finished questioning the VE, Buffington's  
7 counsel asked the VE to add to the ALJ's hypothetical the  
8 "limitation that in response to constructive criticism by a  
9 supervisor this person would withdraw from the workplace due to  
10 anxiety symptoms or stress symptoms and probably would need between  
11 20 or 30 minutes before they would be able to come back to the  
12 workplace to continue [] their job duty." (Tr. 81.) The VE stated,  
13 "[t]hat's [] considered a universal work expectation that an  
14 individual be able to accept constructive criticism. If that  
15 happens all the time, you know, obviously, again, in the unskilled  
16 work that I have identified, there is [a] production expectation.  
17 If he goes off and is away for 30 minutes, I don't think he would  
18 keep the job." (Tr. 81.)  
19

### 20 **III. DISABILITY DETERMINATION AND THE BURDEN OF PROOF**

#### 21 **A. Child Disability Analysis Framework**

22  
23 "The Commissioner has established a three-step sequential  
24 evaluation process for determining if a child is eligible for SSI  
25 benefits." *Gille v. Astrue*, No. CV 10-705-PK, 2011 WL 4406317, at  
26 \*1 (D. Or. June 16, 2011) (citing 20 C.F.R. § 416.924(a)). *Gille*  
27 summarized the three-step sequential evaluation as follows:  
28

1 First, the ALJ must determine whether the child has  
 2 engaged in substantial gainful activity (SGA). If so,  
 3 the child is deemed not disabled and the inquiry ends. If  
 4 the child has not engaged in SGA, then the ALJ must  
 5 determine whether the child suffers from a severe  
 6 impairment or combination of impairments that is severe.  
 7 An impairment is not severe if it is a 'slight  
 8 abnormality or a combination of slight abnormalities that  
 9 causes no more than minimal functional limitations.' If  
 10 the child does not have a severe impairment, the inquiry  
 11 ends; if the child has a severe impairment, the  
 12 evaluation proceeds to the third step. At the third and  
 13 final step, the ALJ must determine whether the child's  
 14 severe impairment meets, medically equals, or  
 functionally equals, one of the listed impairments in 20  
 C.F.R. Part 404, Subpart P, Appendix 1. In making that  
 determination, the ALJ considers all the relevant  
 evidence in the case record, including objective medical  
 evidence, relevant information from other sources, such  
 as teachers, family members, or friends, and the  
 claimant's statements, including statements from the  
 child's parent(s) or caregivers. If the ALJ finds that  
 the impairment meets or equals a listing, then the child  
 is deemed disabled.

15 *Gille*, 2011 WL 3306317, at \*1 (internal citations omitted).

#### 16 ***B. Adult Disability Analysis Framework***

17  
 18 A claimant is disabled if he or she is unable to "engage in  
 19 any substantial gainful activity by reason of any medically  
 20 determinable physical or mental impairment which . . . has lasted  
 21 or can be expected to last for a continuous period of not less than  
 22 12 months[.]" 42 U.S.C. § 423(d)(1)(A).

23 "Social Security Regulations set out a five-step sequential  
 24 process for determining whether an applicant is disabled within the  
 25 meaning of the Social Security Act." *Keyser v. Commissioner*, 648  
 26 F.3d 721, 724 (9th Cir. 2011) (citing 20 C.F.R. § 404.1520)). The  
 27 *Keyser* court described the five steps in the process as follows:  
 28

1 (1) Is the claimant presently working in a substantially  
 2 gainful activity? (2) Is the claimant's impairment  
 3 severe? (3) Does the impairment meet or equal one of a  
 4 list of specific impairments described in the regula-  
 5 tions? (4) Is the claimant able to perform any work that  
 he or she has done in the past? and (5) Are there  
 significant numbers of jobs in the national economy that  
 the claimant can perform?

6 *Keyser*, 648 F.3d at 724-25 (citing *Tackett v. Apfel*, 180 F.3d 1094,  
 7 1098-99 (9th Cir. 1999)); see *Bustamante v. Massanari*, 262 F.3d  
 8 949, 953-54 (9th Cir. 2001) (citing 20 C.F.R. §§ 404.1520 (b)-(f)  
 9 and 416.920 (b)-(f)). The claimant bears the burden of proof for  
 10 the first four steps in the process. If the claimant fails to meet  
 11 the burden at any of those four steps, then the claimant is not  
 12 disabled. *Bustamante*, 262 F.3d at 953-54; see *Bowen v. Yuckert*,  
 13 482 U.S. 137, 140-41, 107 S. Ct. 2287, 2291, 96 L. Ed. 2d 119  
 14 (1987); 20 C.F.R. §§ 404.1520(g) and 416.920(g) (setting forth  
 15 general standards for evaluating disability), 404.1566 and 416.966  
 16 (describing "work which exists in the national economy"), and  
 17 416.960(c) (discussing how a claimant's vocational background  
 18 figures into the disability determination).

21 The Commissioner bears the burden of proof at step five of the  
 22 process, where the Commissioner must show the claimant can perform  
 23 other work that exists in significant numbers in the national  
 24 economy, "taking into consideration the claimant's residual  
 25 functional capacity, age, education, and work experience." *Tackett*  
 26 *v. Apfel*, 180 F.3d 1094, 1100 (9th Cir. 1999). If the Commissioner  
 27 fails meet this burden, then the claimant is disabled, but if the  
 28

1 Commissioner proves the claimant is able to perform other work  
2 which exists in the national economy, then the claimant is not  
3 disabled. *Bustamante*, 262 F.3d at 954 (citing 20 C.F.R.  
4 §§ 404.1520(f), 416.920(f)); *Tackett*, 180 F.3d at 1098-99).

5  
6 The ALJ determines the credibility of the medical testimony  
7 and also resolves any conflicts in the evidence. *Batson v. Comm'r*  
8 *of Soc. Sec. Admin.*, 359 F.3d 1190, 1196 (9th Cir. 2004) (citing  
9 *Matney v. Sullivan*, 981 F.2d 1016, 1019 (9th Cir. 1992)).  
10 Ordinarily, the ALJ must give greater weight to the opinions of  
11 treating physicians, but the ALJ may disregard treating physicians'  
12 opinions where they are "conclusory, brief, and unsupported by the  
13 record as a whole, . . . or by objective medical findings." *Id.*  
14 (citing *Matney, supra*; *Tonapetyan v. Halter*, 242 F.3d 1144, 1149  
15 (9th Cir. 2001)). "[T]he Commissioner must provide clear and  
16 convincing reasons for rejecting the uncontradicted opinion of an  
17 examining physician. . . . [And,] the opinion of an examining  
18 doctor, even if contradicted by another doctor, can only be  
19 rejected for specific and legitimate reasons that are supported by  
20 substantial evidence in the record." *Lester v. Chater*, 81 F.3d  
21 821, 830-31 (9th Cir. 1995) (citations and internal quotation marks  
22 omitted).  
23  
24

25 The ALJ also determines the credibility of the claimant's  
26 testimony regarding his or her symptoms:

27 In deciding whether to admit a claimant's subjective  
28 symptom testimony, the ALJ must engage in a two-step

analysis. *Smolen v. Chater*, 80 F.3d 1273, 1281 (9th Cir. 1996). Under the first step prescribed by *Smolen*, . . . the claimant must produce objective medical evidence of underlying "impairment," and must show that the impairment, or a combination of impairments, "could reasonably be expected to produce pain or other symptoms." *Id.* at 1281-82. If this . . . test is satisfied, and if the ALJ's credibility analysis of the claimant's testimony shows no malingering, then the ALJ may reject the claimant's testimony about severity of symptoms [only] with "specific findings stating clear and convincing reasons for doing so." *Id.* at 1284.

*Batson*, 359 F.3d at 1196.

### **C. The ALJ's Decisions**

#### **1. Childhood Decision**

At the first step, the ALJ found Buffington had not engaged in substantial gainful activity. (Tr. 11.) At the second step, the ALJ found that Buffington's Schizoaffective Disorder and Anxiety Disorder were severe. (Tr. 12.) At the third step, the ALJ found that Buffington's combination of impairments did not meet or equal any of the impairments enumerated in 20 C.F.R. § 404, subpt P, app. 1. (Tr. 12.) In particular, the ALJ found Buffington had less than marked limitations in the domains of acquiring and using information, attending and completing tasks, interacting and relating with others, and health and physical well-being. (Tr. 20-22, 25.) The ALJ found Buffington had no limitations in the domains of moving about and manipulating objects and caring for himself. (Tr. 23-24.) Accordingly, the ALJ found that, prior to his 18th birthday, Buffington was not disabled under the Act.

1 (Tr. 25.)

2 **2. Adult Decision**

3 At the first step of the five-step sequential evaluation  
4 process, the ALJ found that Buffington had not engaged in  
5 substantial gainful activity since his 18th birthday. (Tr. 11, 25,  
6 31.) At the second step, the ALJ found that Buffington's medical  
7 impairments of Schizoaffective Disorder and Anxiety Disorder were  
8 severe for the purposes of the Act. (Tr. 12, 25.) At the third  
9 step, the ALJ found that Buffington's combination of impairments  
10 were not the equivalent of any of the impairments enumerated in 20  
11 C.F.R. § 404, subpt P, app. 1. (Tr. 25.) The ALJ therefore  
12 assessed Buffington as having the residual functional capacity  
13 ("RFC") to:  
14

15 perform a full range of work at all exertional levels but  
16 with the following non-exertional limitations. Claimant  
17 is limited to simple, repetitive tasks with simple  
18 instructions. No fine manipulation of small objects.  
19 Limited to no more than occasional contact with co-  
20 workers and the general public. Bathroom access once per  
21 hour.

22 (Tr. 29.) At the fourth step of the five-step process, the ALJ  
23 found that Buffington had no past relevant work. (Tr. 30.) At the  
24 fifth step, the ALJ found in light of Buffington's age, education,  
25 work experience, and RFC that there were jobs existing in  
26 significant numbers in the national and local economy that he could  
27 perform, including a collator and garment bagger. (Tr. 31.) Based  
28 on the finding that Buffington could perform jobs existing in

1 significant numbers in the national economy, the ALJ concluded that  
2 he was not disabled as defined in the Act from Buffington's 18th  
3 birthday through the date of the decision, September 22, 2009. (Tr.  
4 31.)

#### 5 6 **IV. STANDARD OF REVIEW**

7 The court may set aside a denial of benefits only if the  
8 Commissioner's findings are "'not supported by substantial evidence  
9 or [are] based on legal error.'" *Bray v. Comm'r Soc. Sec. Admin.*,  
10 554 F.3d 1219, 1222 (9th Cir. 2009) (quoting *Robbins v. Soc. Sec.*  
11 *Admin.*, 466 F.3d 880, 882 (9th Cir. 2006)); accord *Black v. Comm'r*,  
12 433 Fed. Appx. 614, 615 (9th Cir. 2011). Substantial evidence is  
13 "'more than a mere scintilla but less than a preponderance; it is  
14 such relevant evidence as a reasonable mind might accept as  
15 adequate to support a conclusion.'" *Id.* (quoting *Andrews v.*  
16 *Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995)).

17  
18 The court "cannot affirm the Commissioner's decision 'simply  
19 by isolating a specific quantum of supporting evidence.'" *Holohan*  
20 *v. Massanari*, 246 F.3d 1195, 1201 (9th Cir. 2001) (quoting *Tackett*  
21 *v. Apfel*, 180 F.3d 1094, 1097 (9th Cir. 1998)). Instead, the court  
22 must consider the entire record, weighing both the evidence that  
23 supports the Commissioner's conclusions, and the evidence that  
24 detracts from those conclusions. *Id.* However, if the evidence as  
25 a whole can support more than one rational interpretation, the  
26 ALJ's decision must be upheld; the court may not substitute its  
27  
28



1 judgment for the ALJ's. *Bray*, 554 F.3d at 1222 (citing *Massachi v.*  
 2 *Astrue*, 486 F.3d 1149, 1152 (9th Cir. 2007)).

### 3 **V. DISCUSSION**

#### 4 **A. Rejection of Dr. Belcher's Opinion**

5  
 6 Buffington first alleges that the ALJ improperly discounted  
 7 the views of state agency examining psychiatrist Belcher, who  
 8 concluded that Buffington's "intellectual functioning is in the  
 9 extremely low range, resulting in a diagnosis of mild mental  
 10 retardation." (Tr. 298.) According to Belcher, there is a 95  
 11 percent probability that Buffington's true IQ lies between 60 and  
 12 68. (Tr. 297.) If credited, Buffington argues that Belcher's  
 13 diagnosis compels a finding of disability under Listing 112.05D  
 14 and/or Listing 12.05C. (Pl.'s Br. at 17.)

15  
 16 Listing 112.05D is satisfied if there is "a valid verbal  
 17 performance, or full scale IQ of 60 through 70 and a physical or  
 18 other mental impairment imposing an additional and significant  
 19 limitation of function." See 20 C.F.R. § 404, Subpart P, Appendix  
 20 1, § 112.05. Similarly, Listing 12.05 is satisfied when the  
 21 claimant has "[a] valid verbal, performance, or full scale IQ of 60  
 22 though 70 and a physical or other mental impairment imposing an  
 23 additional and significant *work-related* limitation of function[.]"  
 24 *Id.* § 12.05C (emphasis added).  
 25

26 The ALJ is charged with resolving conflicting medical  
 27 testimony. *Magallanes v. Bowen*, 881 F.2d 747, 751 (9th Cir. 1989).  
 28

1 If there is conflicting medical testimony, the ALJ must provide  
2 specific and legitimate reasons, supported by substantial evidence,  
3 for rejecting the opinion of a medical expert. *Thomas v. Barnhart*,  
4 278 F.3d 947, 957 (9th Cir. 2002). "The ALJ can meet this burden  
5 by setting out a detailed and thorough summary of the facts and  
6 conflicting clinical evidence, stating his interpretation thereof,  
7 and making findings." *Magallanes*, 881 F.2d at 751 (internal  
8 quotation marks omitted).  
9

10 My review of the record persuades me that the ALJ provided  
11 specific and legitimate reasons for rejecting Belcher's opinion.  
12 See *Andrews v. Shalala*, 53 F.3d 1035, 1042 (9th Cir. 1995) (noting  
13 that conflicting medical testimony, combined with an ALJ's specific  
14 and legitimate reasons for disregarding the conflicting  
15 observations, opinions and conclusions of a physician, constitutes  
16 substantial evidence).  
17

18 The ALJ first discounted Belcher's view because Buffington's  
19 presentation during the psychological assessment was inconsistent  
20 with the bulk of the objective medical evidence. See *Lester*, 81  
21 F.3d at 831 (recognizing that specific and legitimate reasons can  
22 include results of psychological testing conducted by the examining  
23 psychologist that are suspect); see also *Oviatt v. Comm'r of Soc.*  
24 *Sec. Admin.*, 303 Fed. Appx. 519, 523 (9th Cir. 2008) (affirming an  
25 ALJ's decision to discredit IQ results based, in part, on the  
26 claimant's questionable effort and exaggeration of symptoms).  
27  
28

1 Substantial evidence in the record supports the ALJ's  
2 conclusion that Buffington's IQ test results were of questionable  
3 validity. In the March 2002 Psychoeducational Assessment, Doryon  
4 described Buffington as a student of "high average cognitive  
5 ability" with "at least grade level performance in all academic  
6 areas," according to standardized testing. (Tr. 261.) Doryon  
7 acknowledged Buffington's behavioral issues, but ruled out the  
8 possibility this was "primarily due . . . to mental retardation."  
9 (Tr. 261.) Holmes' October 2007 Mental Health Assessment described  
10 Buffington as "quite bright" and indicated that he was "maintaining  
11 a B+ average in the 11<sup>th</sup> grade." (Tr. 333.)

12  
13 With the exception of one class, Castleberry testified  
14 Buffington attended "mainstream classes" during high school. (Tr.  
15 66.) Castleberry also described Buffington as "very bright." (Tr.  
16 71.) During his senior year in high school, Buffington maintained  
17 a 2.35 cumulative grade point average and a class rank of 188 out  
18 of 320 students. (Tr. 172.) Buffington's high school transcript  
19 indicates he received an A in "SS World Study" and several mixed  
20 choir classes; B's in Algebra 1 (during summer school), Spanish 1,  
21 General Biology, and tenth grade English; and C's in Zoology,  
22 American Studies, Pre-Algebra, Integrated Science, and ninth grade  
23 English. (Tr. 172.)

24  
25 Although Buffington has a history of participation in special  
26 education classes, the record suggests this is due to emotional  
27  
28

1 disturbance rather than cognitive deficit. (See Tr. 316) (noting  
2 that Buffington's IEP "is for Emotional Disturbance" and that he  
3 was on track "to graduate with a regular diploma.") Buffington's  
4 IEP instructor, Goldman, reported that Buffington "gets stuck a  
5 lot" in class; however, this "usually means [Buffington] is  
6 stressed out [and] doesn't want to do [] work." (Tr. 160.) As  
7 Goldman noted, Buffington "[r]arely will do work independently" and  
8 would rather have someone tell "him what to do every step of the  
9 way *even though he can do [it] on his own.*" (Tr. 161) (emphasis  
10 added).  
11

12       The ALJ also discredited Belcher's opinion based on the  
13 conflicting medical testimony provided by Lawrence. Lawrence found  
14 Belcher's conclusions to be a "grossly erroneous interpretation of  
15 [Buffington]'s cognitive abilities." (Tr. 19.) In Lawrence's  
16 opinion, Belcher "neglected to confirm a history of developmental  
17 delay and deficits of adaptive behavior before advancing the  
18 diagnosis of Mental Retardation. She merely cited the IQ scores,  
19 as if no other confirming evidence was required." (Tr. 304.) After  
20 considering the entire record, including Buffington's "longitudinal  
21 records of mental health treatment" and school transcripts,  
22 Lawrence opined that Buffington behaved inconsistently during  
23 Belcher's examination. (Tr. 19.)  
24  
25  
26  
27  
28

1 As the ALJ noted, unlike Belcher,<sup>11</sup> Lawrence "considered the  
 2 records of evidence and offered reasonable explanations and  
 3 conclusions." (Tr. 19.) I conclude that this was a specific and  
 4 legitimate reason for rejecting Belcher's opinion in favor of  
 5 Lawrence's. See *Gray v. Comm'r of Sec. Sec. Admin.*, 365 Fed. Appx.  
 6 60, 62 (9th Cir. 2010) (concluding that the ALJ provided a specific  
 7 and legitimate reason for rejecting one physician's opinion in  
 8 favor of another because the accepted physician's opinion took into  
 9 consideration additional evidence, such as the claimant's medical  
 10 records and high school transcript).

12 In sum, the ALJ came to a reasonable conclusion based on the  
 13 evidence in the record regarding Belcher's opinion. *Bayliss v.*  
 14 *Barnhart*, 427 F.3d 1211, 1214 n.1 (9th Cir. 2005) ("If the record  
 15 would support more than one rational interpretation, we defer to  
 16 the ALJ's decision.")

#### 18 ***B. Rejection of Dr. Vergamini's Opinion***

19 Buffington argues that the ALJ erred by failing to provided  
 20 clear and convincing reasons for rejecting the opinion of his  
 21 treating psychiatrist.  
 22

23 In July of 2009, Buffington's counsel sent Vergamini a letter  
 24 asking him to comment on Buffington's present status and functional  
 25

---

26 <sup>11</sup> It does not appear that Belcher had the benefit of  
 27 reflecting on the extensive record that was before the ALJ or  
 28 Lawrence. (See Tr. 293) ("The report of this interview is based  
 solely on the client's self-report, one psychiatrist's note, and a  
 brief conversation with the client's mother.")

1 capacity limitations. (Tr. 393.) In particular, within the July  
2 2009 letter Buffington's counsel stated:

3 Ultimately, I believe the question in Mr. Buffington's  
4 case will come down to whether he could sustain a simple  
5 routine, low stress job, that does not require him to  
6 come into contact with the public and does not require  
7 him to work in close coordination with supervisors or co-  
8 workers. The main requirement of such a job is that he  
9 be present full-time, eight hours per day, five days per  
10 week without special accommodations, or without excessive  
absences from work. Excessive absences from work is  
defined as absences greater than two days per month. Is  
there anything about Mr. Buffington's condition, and the  
symptoms that he is experiencing that would interfere  
with his ability to sustain this type of activity?

11 (Tr. 394.) In response, Vergamini said he doubted "if [Buffington]  
12 could maintain 8hours/day 5days/week without *some* accommodations or  
13 absences." (Tr. 394) (emphasis added).  
14

15 A treating physician's medically supported opinion regarding  
16 the nature and severity of a claimant's impairments is generally  
17 given great weight. *Orn v. Astrue*, 495 F.3d 625, 632 (9th Cir.  
18 2007); 20 C.F.R. § 404.1527(d)(2). Even if a treating physician's  
19 opinion is contradicted, the ALJ may disregard it only by setting  
20 forth specific and legitimate reasons supported by substantial  
21 evidence in the record for doing so. *Tonapetyan*, 242 F.3d at 1148.  
22

23 Here, the ALJ assigned Vergamini's opinion little weight  
24 because it was "inconsistent with his own treatment notes." (Tr.  
25 29.) As the ALJ noted, Vergamini stated Buffington "might be able  
26 to function in school," yet Buffington had already been functioning  
27 in school and, in fact, was mainstreamed for a majority of the day  
28

1 and received a regular diploma. (Tr. 29.)

2 An ALJ may reject a treating medical opinion that is  
3 inconsistent with the physician's own treatment notes. *Paulson v.*  
4 *Astrue*, 368 Fed. Appx. 758, 760 (9th Cir. 2010) ("The ALJ properly  
5 discredited [the physicians]'s opinion because it was inconsistent  
6 with [his] own prior treatment notes, including those indicating  
7 that [the claimant]'s subjective symptoms could not be explained by  
8 objective medical evidence.") However, contrary to the ALJ's  
9 contentions, Vergamini's opinion is not necessarily inconsistent  
10 with his treatment notes. At the time Vergamini issued his  
11 opinion, Buffington had recently graduated and was planning on  
12 attending a community college in the fall of 2009. Given the  
13 accommodations and support Buffington received in high school, it  
14 seems likely Vergamini was expressing uncertainty whether  
15 Buffington could function, either in the full-time workplace or at  
16 the community college level, without the accommodations and support  
17 he enjoyed at high school. This does not conflict with anything  
18 the court sees in Vergamini's treatment notes.  
19

20  
21 The ALJ failed to identify what, if anything, in Vergamini's  
22 treatment notes conflicts with his opinion he was uncertain  
23 Buffington would be able to work absent special accommodations.  
24 Although a medical source opinion about whether a claimant is  
25 "disabled" or "unable to work" is an administrative finding  
26 ultimately reserved for the Commissioner, the treater's opinion on  
27  
28

1 the issue cannot be disregarded and must be considered.  
2 *Katzenberger v. Astrue*, Civ. No. 10-6029-CL, 2011 WL 4381574, at  
3 \*10 (D. Or. July 26, 2011).

4 In summary, I conclude that the reason given by the ALJ for  
5 discounting Vergamini's opinion was insufficient.  
6

7 **C. Adverse Credibility Determination**

8 Buffington also argues that the ALJ improperly discredited his  
9 symptom testimony. Under Ninth Circuit case law,

10 [w]ithout affirmative evidence showing that the claimant  
11 is malingering, the Commissioner's reasons for rejecting  
12 the claimant's testimony must be clear and convincing. If  
13 an ALJ finds that a claimant's testimony relating to the  
14 intensity of his pain and other limitations is  
15 unreliable, the ALJ must make a credibility determination  
16 citing the reasons why the testimony is unpersuasive. The  
17 ALJ must specifically identify what testimony is credible  
and what testimony undermines the claimant's complaints.  
In this regard, questions of credibility and resolutions  
of conflicts in the testimony are functions solely of the  
Secretary.

18 *Morgan v. Comm'r of Soc. Sec. Admin.*, 169 F.3d 595, 599 (9th Cir.  
19 1999) (citations omitted). The ALJ met this standard here.

20 The ALJ found Buffington's statement concerning the intensity,  
21 persistence and limiting effects of his symptoms not entirely  
22 credible. In weighing a claimant's credibility, an "ALJ may  
23 consider his reputation for truthfulness, inconsistencies either in  
24 his testimony or between his testimony and his conduct, and  
25 testimony from physicians and third parties concerning the nature,  
26 severity, and effect of the symptoms of which he complains." *Light*  
27 *v. Soc. Sec. Admin.*, 119 F.3d 789, 792 (9th Cir. 1997).  
28



1       The ALJ made specific findings in support of his decision to  
2 discount Buffington's testimony, noting, *inter alia*, that: (1)  
3 Buffington's hearing testimony was inconsistent with the objective  
4 medical evidence that indicated his medication helped alleviate  
5 stress and other symptoms associated with his mental impairments;  
6 (2) Buffington recently graduated and was preparing to attend  
7 community college, despite the alleged intensity and persistence of  
8 his stress and anxiety; (3) treatment notes reflected that  
9 Buffington had been avoiding and/or denied experiencing psychotic  
10 symptoms; and (4) Holmes' 2006 Mental Health Assessment indicated  
11 that treating psychiatrist Freedman "reported that [Buffington]'s  
12 self-reported hallucinatory activities did not appear to be true  
13 hallucinations," yet Buffington "and his mother continued to be  
14 strongly invested in [Buffington] being an individual with  
15 'psychosis,' which is to say a person with severe and persistent  
16 mental illness." (Tr. 348.)  
17  
18

19       In sum, I conclude that the ALJ articulated acceptable reasons  
20 for discounting Buffington's testimony which are supported by ample  
21 evidence in the record.  
22

#### 23                   ***D. Vocational Expert Hypothetical***

24       Buffington contends that, if this case is not reversed for  
25 payment based upon the first three arguments, then this case should  
26 be remanded for further proceedings because the VE hypothetical did  
27 not contain the ALJ's own finding that Buffington suffers moderate  
28

1 difficulties in maintaining concentration, persistence or pace. The  
2 Commissioner argues that the ALJ's hypothetical question "reflected  
3 all of [Buffington]'s credible limitations." (Def.'s Br. at 11.)

4 "Hypothetical questions posed to the vocational expert must  
5 set out all the limitations and restrictions of the particular  
6 claimant." *Embrey v. Bowen*, 849 F.2d 418, 422 (9th Cir 1988). In  
7 his written decision, the ALJ stated, "[t]he record indicates  
8 claimant has moderate difficulties in maintaining concentration,  
9 persistence, or pace." (Tr. 26.) But the ALJ did not account for  
10 these nonexertional limitations when he posed hypothetical  
11 questions to the VE about the type of work that Buffington was able  
12 to perform. (See 76-81.) This oversight was error. See  
13 *Williamson v. Comm'r of Soc. Sec.*, 438 Fed. Appx. 609, 612 (9th  
14 Cir. 2011) (finding the same omission to be reversible error).

15 Accordingly, this case should be remanded to the Commissioner  
16 for further administrative proceedings. In those proceedings, the  
17 ALJ must include Buffington's concentration, persistence, and pace  
18 limitations in the questions posed to the VE. Depending on the  
19 circumstances, it may also be appropriate for the ALJ to include  
20 limitations regarding Buffington's absenteeism. During the August  
21 20, 2009 hearing, Buffington's counsel inquired as to acceptable  
22 absentee rates in the workplace; however, it does not appear that  
23 this limitation was specifically incorporated into any of the VE  
24 hypotheticals. (See Tr. 80-81.) In light of the Teacher  
25

1 Questionnaire of September 19, 2008, completed at the beginning of  
2 Buffington's senior year by Phyllis Goldman, his teacher of some two  
3 years, where Goldman notes an "unusual degree of absenteeism," (Tr.  
4 160-67) and the testimony of Buffington (missed school at least  
5 three times a month, Tr. 60) and Castleberry (Buffington will "go  
6 [to school] three to four days out of a five-day week," Tr. 69), the  
7 VE should address the issue of absenteeism because Buffington's  
8 school environment was significantly more supportive than a typical  
9 work environment.  
10

#### 11 **VI. CONCLUSION**

12 For the foregoing reasons, I recommend that the decision of the  
13 Commissioner regarding Claimant be **REVERSED** and **REMANDED** for further  
14 proceedings consistent with this Findings and Recommendation and the  
15 parameters provided herein.  
16

#### 17 **VII. SCHEDULING ORDER**

18 The Findings and Recommendation will be referred to a district  
19 judge. Objections, if any, are due **March 12, 2012**. If no  
20 objections are filed, then the Findings and Recommendation will go  
21 under advisement on that date. If objections are filed, then a  
22 response is due **March 20, 2012**. When the response is due or filed,  
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1 whichever date is earlier, the Findings and Recommendation will go  
2 under advisement.

3 Dated this 27<sup>th</sup> day of February, 2012.

4 /s/ Dennis James Hubel

5  
6 Dennis James Hubel  
7 Unites States Magistrate Judge  
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